

The Honorable Tiffany M. Cartwright

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA**

MOZZY CLARK,

Plaintiff,

v.

STATE OF WASHINGTON, DEPARTMENT
OF CORRECTIONS; LT. DENNIS SIMONS;
SGT. REGINA WILLIAMS A/K/A REGINA
ESPERANZA AVELLAR; HEIDI
WHITTEMORE; OFFICER THERESA
AYOTTE; OFFICER MICHAEL BROOKS; and
DOES 1-10.

Defendants.

NO. 3:24-CV-06058-TMC

ANSWER TO FIRST AMENDED
COMPLAINT FOR DAMAGES BY
DEFENDANTS STATE OF
WASHINGTON DEPARTMENT OF
CORRECTIONS, LT. DENNIS
SIMONS, AND HEIDI WHITTEMORE

JURY DEMAND

Defendants State of Washington, Department of Corrections, Lt. Dennis Simons, and Heidi Whittemore (“Answering Defendants”), in Answer to Plaintiff Mozzy Clark’s First Amended Complaint for Damages, admit, deny, and allege as follows:

I. INTRODUCTION

1. Answering Defendants deny the allegations in Paragraph 1.
2. Answering Defendants deny the allegations in Paragraph 2.
3. Answering Defendants deny the allegations in Paragraph 3.

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DEFENDANTS STATE, SIMONS, AND
WHITTEMORE – NO. 3:24-CV-06058-
TMC – Page 1

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4. Answering Defendants deny the allegations in paragraph 4.

5. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5, and therefore deny the same.

6. Answering Defendants deny the allegations in Paragraph 6.

7. Answering Defendants deny the allegations in Paragraph 7.

JURISDICTION AND VENUE

8. Answering Defendants admit the Court has subject matter jurisdiction. Answering Defendants deny the remainder of the allegations in Paragraph 8.

9. Answering Defendants admit venue is proper in this judicial district. Answering Defendants deny the remainder of the allegations in Paragraph 9.

PARTIES

10. Answering Defendants admit Plaintiff was previously a prisoner housed at the Washington Corrections Center for Women (“WCCW”), which is located in Pierce County, Washington and that she has since been released from custody. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 10, and therefore deny the same.

11. Answering Defendants admit that the Washington State Department of Corrections is an agency of the State of Washington. The remainder of the allegations in Paragraph 11 constitutes legal argument rather than an averment of fact, and therefore requires no answer. To the extent that the remainder of the allegations in Paragraph 11 requires an answer, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of said allegations, and therefore deny the same.

12. Answering Defendants admit Dennis Simons is a Lieutenant at WCCW. The remainder of the allegations in Paragraph 12 constitute legal argument rather than an averment of fact, and therefore no answer is required. To the extent an answer to the remainder of the

1 allegations in Paragraph 12 is required, Answering Defendants lack knowledge or information
2 sufficient to form a belief as to the truth of said allegations, and therefore deny the same.

3 13. Answering Defendants admit Heidi Whittemore is currently a Correctional Unit
4 Supervisor (“CUS”). The remainder of the allegations in Paragraph 13 constitute legal argument
5 rather than an averment of fact, and therefore no answer is required. To the extent an answer to
6 the remainder of the allegations in Paragraph 13 is required, Answering Defendants lack
7 knowledge or information sufficient to form a belief as to the truth of said allegations, and
8 therefore deny the same.

9 14. Answering Defendants admit Defendant Williams was previously a Sergeant at
10 WCCW. The remainder of the allegations in Paragraph 14 constitute legal argument rather than
11 an averment of fact, and therefore no answer is required. To the extent an answer to the remainder
12 of the allegations in Paragraph 14 is required, Answering Defendants lack knowledge or
13 information sufficient to form a belief as to the truth of said allegations, and therefore deny the
14 same.

15 15. Answering Defendants admit Theresa Ayotte is a corrections officer at WCCW.
16 Answering Defendants lack knowledge or information sufficient to form a belief as to the truth
17 of the remainder of the allegations in Paragraph 15, and therefore deny the same.

18 16. Answering Defendants admit Michael Brooks is a corrections officer at WCCW.
19 Answering Defendants lack knowledge or information sufficient to form a belief as to the truth
20 of the remainder of the allegations in Paragraph 16, and therefore deny the same.

21 17. The allegations in Paragraph 17 constitute legal argument rather than averments
22 of fact, and therefore require no answer. To the extent that the allegations in Paragraph 17 require
23 an answer, Answering Defendants lack knowledge or information sufficient to form a belief as to
24 the truth of said allegations, and therefore deny the same.

26. Answering Defendants admit that for a period of time Plaintiff was housed with another inmate at WCCW who is a biological male, but who identifies as having female gender. Answering Defendants deny the remainder of the allegations in Paragraph 26.

27. Answering Defendants deny the allegations in Paragraph 27.

28. Answering Defendants admit that inmate Williams had previously been convicted of sex offenses and had been incarcerated in men's correctional facilities prior to being housed at WCCW. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the remainder of the allegations in Paragraph 28, and therefore deny the same.

29. Answering Defendants deny the allegations in Paragraph 29.

30. Answering Defendants deny the allegations in Paragraph 30.

31. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31, and therefore deny the same.

32. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 32, and therefore deny the same.

33. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 33, and therefore deny the same.

34. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 34, and therefore deny the same.

35. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 35, and therefore deny the same.

36. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 36, and therefore deny the same.

37. Answering Defendants deny the allegations in Paragraph 37.

38. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 38, and therefore deny the same.

39. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 39, and therefore deny the same.

40. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 40, and therefore deny the same

41. Answering Defendants admit that a bag containing sex toys was confiscated from Inmate Williams. Answering Defendants deny the remainder of the allegations in Paragraph 41.

42. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 42, and therefore deny the same

43. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 43, and therefore deny the same.

44. Answering Defendants deny the allegations in Paragraph 44.

45. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 45, and therefore deny the same.

46. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 46, and therefore deny the same.

47. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 47, and therefore deny the same.

48. Answering Defendants deny the allegations in Paragraph 48.

49. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 49, and therefore deny the same.

50. Answering Defendants admit Plaintiff filed a Prison Rape Elimination Act (“PREA”) complaint against Inmate Williams on February 20, 2022.

51. Answering Defendants admit Inmate Williams was removed from Plaintiff’s cell following her PREA complaint. Answering Defendants deny that it was weeks later before this occurred.

52. Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 52, and therefore deny the same.

53. Answering Defendants deny the allegations in Paragraph 53.

54. Answering Defendants deny the allegations in Paragraph 54.

FIRST CAUSE OF ACTION

DEPRIVATION OF CONSTITUTIONAL RIGHTS—FIRST/EIGHTH/FOURTEENTH AMENDMENTS – *State-Created Danger* – 42 U.S.C. Section 1983 (Against all Defendants)

55. Answering Paragraph 55, Answering Defendants reassert their responses to the referenced paragraphs above.

56. Answering Defendants deny the allegations in Paragraph 56.

57. Answering Defendants deny the allegations in Paragraph 57.

58. Answering Defendants deny the allegations in Paragraph 58.

59. Answering Defendants deny the allegations in Paragraph 59.

SECOND CAUSE OF ACTION

DEPRIVATION OF CONSTITUTIONAL RIGHTS— FIRST/EIGHTH/FOURTEENTH AMENDMENTS – *Deliberate Indifference* – 42 U.S.C. Section 1983 (Against all Defendants)

60. Answering Paragraph 60, Answering Defendants reassert their responses to the referenced paragraphs above.

61. Answering Defendants deny the allegations in Paragraph 61.

62. Answering Defendants deny the allegations in Paragraph 62.

63. Answering Defendants deny the allegations in Paragraph 63.

64. Answering Defendants deny the allegations in Paragraph 64.

THIRD CAUSE OF ACTION

DEPRIVATION OF CONSTITUTIONAL RIGHTS—FIRST/EIGHTH/FOURTEENTH AMENDMENTS – *Conspiracy* – 42 U.S.C. Section 1983 (Against all Defendants)

65. Answering Paragraph 65, Answering Defendants reassert their responses to the referenced paragraphs above.

66. Answering Defendants deny the allegations in Paragraph 66.

67. Answering Defendants deny the allegations in Paragraph 67.

68. Answering Defendants deny the allegations in Paragraph 68.

69. Answering Defendants deny the allegations in Paragraph 69.

70. Answering Defendants deny the allegations in Paragraph 70.

71. Answering Defendants deny the allegations in Paragraph 71.

FOURTH CAUSE OF ACTION

DEPRIVATION OF CONSTITUTIONAL RIGHTS—FOURTEENTH AMENDMENT – *Right to Bodily Privacy* – 42 U.S.C. Section 1983 (Against all Defendants)

72. Answering Paragraph 72, Answering Defendants reassert their responses to the referenced paragraphs above.

73. Answering Defendants deny the allegations in Paragraph 73.

74. The allegations in Paragraph 74 constitute legal argument rather than any averment of fact, and therefore require no answer. To the extent the allegations in Paragraph 74 require an answer, Answering Defendants lack knowledge or information sufficient to form a belief as to the truth of said allegations, and therefore deny the same.

75. Answering Defendants deny the allegations in Paragraph 75.

76. Answering Defendants deny the allegations in Paragraph 76.

77. Answering Defendants deny the allegations in Paragraph 77.

78. Answering Defendants deny the allegations in Paragraph 78.

79. Answering Defendants deny the allegations in Paragraph 79.

DEMAND FOR JURY TRIAL

The Paragraph labeled, “DEMAND FOR JURY TRIAL,” contains only a request for relief

1 rather than any averment of fact, and therefore requires no answer. To the extent any allegations
2 in this Paragraph require an answer, Answering Defendants lack knowledge or information
3 sufficient to form a belief as to the truth of said allegations, and therefore deny the same.

4 **PRAYER FOR RELIEF**

5 The Paragraph labeled, “PRAYER FOR RELIEF,” is a request for relief rather than any
6 averment of fact, and therefore requires no answer. To the extent any allegations in this Paragraph
7 require an answer, Answering Defendants deny Plaintiff is entitled to any of the relief requested.

8 Answering Defendants further deny each and every other allegation contained in
9 Plaintiff’s First Amended Complaint for Damages that is not explicitly admitted in this Answer.

10 **AFFIRMATIVE DEFENSES**

11 By way of FURTHER ANSWER and AFFIRMATIVE DEFENSE, Answering
12 Defendants allege as follows:

- 13 1. Plaintiff fails to state a claim for which relief can be granted.
- 14 2. Defendant State of Washington Department of Corrections and its agents, officials,
15 and employees in their official capacities are not subject to civil suits for damages in federal court
16 pursuant to immunity conferred under the Eleventh Amendment of the Constitution of the United
17 States.
- 18 3. All claims alleged under 42 U.S.C. § 1983 against individual State employee
19 defendants herein are barred by the doctrine of qualified immunity.
- 20 4. Plaintiff’s claims are barred by the doctrines of res judicata and/or collateral
21 estoppel.
- 22 5. Plaintiff’s claims are barred by the prohibition on claim splitting, because Plaintiff
23 has asserted claims against the same Defendants in a separate lawsuit in Pierce County Superior
24 Court based on the same alleged occurrences and for the same alleged injuries.

1 6. Because a parallel action is pending in state court, this Court should abstain from
2 adjudicating this matter pursuant to *Colorado River Water Conservation Dist. v. United States*,
3 424 U.S. 800, 818-19, 96 S.Ct. 1236, 47 L.Ed 483 (1976).

4 7. If Plaintiff suffered any damages, recovery therefore is barred by Plaintiff's failure
5 to mitigate said damages.

6 8. Defendant State of Washington Department of Corrections is entitled to an offset
7 from any awards to Plaintiff herein for the costs of any related treatment it provided.

8 **ANSWERING DEFENDANTS' REQUEST FOR RELIEF**

9 WHEREFORE, Answering Defendants pray that Plaintiff's First Amended Complaint for
10 Damages be dismissed with prejudice, that Plaintiff take nothing by her First Amended Complaint
11 for Damages, and that Answering Defendants be allowed their costs and reasonable attorneys'
12 fees herein.

13 **ANSWERING DEFENDANTS' JURY DEMAND**

14 In the event this case proceeds to trial, Answering Defendants demand that this case be
15 tried to a jury.

16 DATED this 31ST day of January, 2025.

17 SIMMONS SWEENEY FREIMUND
18 SMITH TARDIF, PLLC

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24 John@ssslawgroup.com
25 Special Assistant Attorney General
26 Attorney for Answering Defendants

PROOF OF SERVICE

I certify that on January 31, 2025 I electronically filed the foregoing with the Court through CM/ECF and served on all parties or their counsel of record a copy of this document addressed as follows:

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I certify under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED this 31st day of January, 2025 at Olympia, WA.

/s/ Jenny Singleton

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